

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TENNESSEE**  
**KNOXVILLE DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:14-CV-320
	)	
\$18,480.00 U.S. CURRENCY SEIZED	)	
FROM EL A. WILLIS ON	)	
FEBRUARY 10, 2014	)	
	)	
Defendant.	)	

**CLAIMANT'S BRIEF TO GOVERNMENT'S MOTION TO STRIKE (DOC.12) AND**  
**CLAIMANT'S MOTION FOR THE COURT TO ACCEPT HIS VERIFIED CLAIM**  
**(DOC.14) AS TIMELY FILED**

1. To contest a forfeiture of seized property in United States District Court, a claim first must be filed with Forfeiture Counsel of the DEA. The claim need not be made in any particular form (Title 18, U.S.C., Section 983(a)(2)(C)). The claim shall identify the specific property being claimed; state the claimant's interest in such property; and be made under oath, subject to penalty of perjury (Title 18, U.S.C., Section 983(a)(2)(C)).

2. Claimant filed his claim in a timely manner on March 18, 2014, to the U.S.C. Title § 983, Forfeiture Counsel, Asset Forfeiture Section, Drug Enforcement Administration, HQs Forfeiture Response, which was before the deadline of April 10, 2014. (Attached as Exhibit A)

3. On April 1, 2014, the Claimant received a response back from the U.S. Department of Justice Drug Enforcement Administration that El A. Willis's claim had been accepted and was referred to the U.S. Attorney, Civil Division, in the Judicial District.

4. On July 14, 2014, the Government filed a Verified Complaint In Rem (Doc.1). Notice of the Complaint for Forfeiture was delivered to Claimant's attorney on July 24, 2014.

5. A. Philip Lomonaco filed his Notice of Appearance (Doc.6) representing the Claimant El A. Willis on August 12, 2014.

6. On the same day, August 12, 2014, Claimant's Counsel filed a Motion to Dismiss (Doc.8), Pursuant to Federal Rule of Civil Procedure 12(b)(6), which asked the Court to dismiss the Plaintiff's Complaint on the ground that the Complaint failed to state a claim upon which relief could be granted.

7. The Motion to Dismiss the Forfeiture action clearly noticed the Government the Claimant intended to pursue a claim for the money.

8. In Rule G(5)(a)(i), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions it states:

"A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending." [Emphasis Added]

Clearly filing a Motion to Dismiss is contesting the forfeiture.

9. As such, Claimant filed a responsive Pleading to the Forfeiture Complaint contesting the seizure and asserting an interest in the property within the 35 days after receiving Notice of the Complaint for Forfeiture.

10. The Government moves to strike Claimant's Motion to Dismiss asserting the Claimant did not contest the forfeiture by first filing a claim before Claimant filed his Motion to Dismiss.

11. Rule G(5)(a)(ii) gives the Court discretion to alter the time for filing the claim for good cause.

12. Claimant has now filed a Verified Claim (Doc. 14), as desired by the Government, filed September 3, 2014, six (6) days after the time limit pressed by the Government.

13. According to Rule G(5)(a)(ii), this Court has the discretion to set different time limits for filing a claim. Under the facts of this case, the Government has not been prejudiced at all, because the Government knew the Claimant asserted an interest in the property by his initial Motion to Dismiss (Doc. 8) under Rule 12(b)(6) of Federal Rules of Civil Procedure and now the Claimant's has filed his Verified Claim (Doc.14). The Claimant's Motion to Dismiss was filed well within the time limits for filing a claim.

WHEREFORE, the Claimant would request this Court find good cause to accept the Motion to Dismiss (Doc. 8) and Verified Claim (Doc. 14) as timely filed.

Respectfully submitted the 12th day of September, 2014.

/s/A. Philip Lomonaco  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served upon parties or counsel for the parties, in interest herein through the CM/ECF system, if they are registered users or, if they are not, by mailing the same to say offices by United States Mail, with sufficient postage prepaid.

/s/A. Philip Lomonaco

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